

REMARKS

In the Office Action, the Examiner noted that Claims 1-273 are pending in the application, of which Claims 4-73, 111, 113-115, 120, 134-149, 159-169, 238-240, 242, 243, and 254-271 are withdrawn from consideration; and Claims 1-3, 74-110, 112, 116-119, 121-133, 150-158, 170-237, 241, 244-253, and 272-273 are subject to further restriction and/or election requirement.

By the present amendment Claim 244 has been amended.

By the present amendment Claims 1-3, 74-102, 108, 110, 112, 116-119, 122, 125-127, 130, 150-158, 170, 176-179, 198, 226, 229, 236, 241, 244-253, 272, and 273 are elected for further prosecution; and Claims 103-107, 109, 121, 123, 124, 128, 129, 131-133, 171-175, 180-197, 199-225, 227, 228, 230-235, and 237 are further withdrawn from consideration.

Thus by the present amendment, Claims 1-273 are pending in the application, of which Claims 4-73, 103-107, 109, 111, 113-115, 120, 121, 123, 124, 128, 129, 131-149, 159-169, 171-175, 180-197, 199-225, 227, 228, 230-235, 237-240, 242, 243, and 254-271 are withdrawn from consideration; and Claims 1-3, 74-102, 108, 110, 112, 116-119, 122, 125-127, 130, 150-158, 170, 176-179, 198, 226, 229, 236, 241, 244-253, 272, and 273 are under consideration.

Response to Arguments

In the Office Action Examiner acknowledged Applicants earlier election of Group I and Specie 4 directed to FIG. 2D, with Claims 1-3, 74-110, 112, 116-119, 121-133, 150-158, 170-237, 241, 244-253, and 272-273 readable thereon. In the Office Action Examiner identified six (6) different groups of sub-species, 15-86 (each represented by one claim with the exception of sub-species 78 and 80 each stated to be represented by two claims), within Group I/Species 4.

Examiner required, under 35 U.S.C. 121 (see paragraph 2-7 of the Office Action), the election of a single sub-specie from each of the six (6) groups for prosecution on the merit to which the claims would be restricted if no generic claim is finally held allowable. The Office action identifies Claims 1, 74, 150, 241, and 244 as generic to each of the six (6) groups.

In response to the restriction requirement and election of species, Applicants elect the following Group I / species 4 / sub-species as “represented by the following Claims” with traverse; with Claims 1-3, 74-102, 108, 110, 112, 116-119, 122, 125-127, 130, 150-158, 170, 176-179, 198, 226, 229, 236, 241, 244-253, 272, and 273 readable thereon:

Sub-species 20 with respect to Group I / Species 4 / Sub-species group 1;

Sub-species 23 with respect to Group I / Species 4 / Sub-species group 2;

Sub-species 37 with respect to Group I / Species 4 / Sub-species group 3;

Sub-species 49 with respect to Group I / Species 4 / Sub-species group 4;

Sub-species 78 with respect to Group I / Species 4 / Sub-species group 5;

Sub-species 85 with respect to Group I / Species 4 / Sub-species group 6.

Applicant respectfully traverses the Examiner’s basis for requiring the further restriction/election of species.

In the case of each of the stated sub-species, the Examiner stated that the sub-specie is “represented” by a particular claim and refers to a specific claim number. For example, sub-specie 15 is said to be “represented by claim 103.” Applicants respectfully submit that the Examiner’s basis for requiring such elections is erroneous. Manual of Patent Examining Procedure clearly states that “Claims are definitions of inventions. **Claims are never species.**” M.P.E.P. § 806.04(e) (emphasis added). As such, Applicants respectfully traverse Examiner’s requirement for further sub-specie elections.

CONCLUSION

The Applicants believe that the pending claims are directed to patentable subject matter. Consideration and an early allowance thereof are earnestly solicited.

If the Examiner believes a telephonic conference would expedite prosecution of this application, please telephone the undersigned at 415-576-0200.

Respectfully submitted,



Nena Bains
Reg. No. 47,400

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, 8th Floor
San Francisco, California 94111-3834
Tel: (415) 576-0200
Fax: (415) 576-0300
60363305 v1